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Paper No.

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**APR 28 2008**

In re Application of : **OFFICE OF PETITIONS**  
Norbert Diekhans : **DECISION ON PETITION**  
Application No. 09/640,126 :  
Filed: August 16, 2000 :  
Atty Docket No. 3869/59156-083:

This is in response to the PETITION FOR REVIVAL OF AN  
APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR  
1.137(b) filed March 25, 2008.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be  
submitted within TWO (2) MONTHS from the mail date of this  
decision. Extensions of time under 37 C.F.R. § 1.136(a) are  
permitted. The reconsideration request should include a cover  
letter entitled "Renewed Petition under 37 C.F.R. § 1.137(b)."

The above-identified application became abandoned effective  
October 17, 2001 for failure to file a reply to the final Office  
action mailed July 16, 2001. A Notice of Abandonment was mailed  
on February 26, 2002.

By decision mailed August 23, 2002, a prior petition to withdraw  
the holding of abandonment filed April 23, 2002 was granted.  
Petitioner established non-receipt of the Office action.  
However, having subsequently received a copy of the Office  
action, the petition included a response in the form of an  
amendment. Upon granting of the petition, the application was  
forwarded to the examiner for consideration of the amendment.

The provisions of 37 C.F.R. § 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent. A petition filed pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

On petition, applicants resubmitted the amendment filed April 23, 2002 as the proposed reply, made the required statement of unintentional delay and paid the petition fee set forth in 37 CFR § 1.17(m). No terminal disclaimer is required. However, the instant petition does not satisfy requirement (1) above.

As stated in MPEP 711.03(c),

A reply under 37 CFR 1.113 to a final action must include a request for continued examination (RCE) under 37 CFR 1.114 or cancellation of, or appeal from the rejection of, each claim so rejected. Accordingly, in a nonprovisional application abandoned for failure to reply to a final action, the reply required for consideration of a petition to revive must be:

- (A) a Notice of Appeal and appeal fee;
- (B) an amendment under 37 CFR 1.116 that cancels all the rejected claims or otherwise prima facie places the application in condition for allowance;
- (C) the filing of an RCE (accompanied by a submission that meets the reply requirements of 37 CFR 1.111 and the requisite fee) under 37 CFR 1.114 for utility or plant

applications filed on or after June 8, 1995 (see paragraph (d) below); or  
(D) the filing of a continuing application under 37 CFR 1.53(b) (or a CPA under 37 CFR 1.53(d) if the application is a design application).

The amendment submitted does not place the application in condition for allowance. The examiner mailed an Advisory Action on March 28, 2008. In view thereof, the petition must be dismissed.

Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents,  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: (571) 273-8300  
ATTN: NANCY JOHNSON  
SENIOR PETITIONS ATTORNEY

By hand: Customer Service Window  
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Telephone inquiries regarding this decision may be directed to the undersigned at 571-272-3219.

To facilitate action on any renewed petition, petitioner may call the undersigned to advise when their response has been made of record in the application.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions